IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3699 OF 1991

Pandurang Maruti Garud, since
deceased by his legal heirs
and representatives
Ganpat Pandurang Garud & Ors. ..Petitioners

versus

Ashok Haribhau Lamte & Anr. ..Respondents

Mr. A. J. Joshi for the Petitioners.

Mr. D. S. Sawant for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 9TH OCTOBER, 2006

ORAL ORDER :

1. Heard learned counsel for the petitioners and the respondents.

2. The original petitioner was the tenant in respect of Survey No. 41/4 admeasuring 29 gunthas only, a very small holding, it is less than 1 acre and slightly more than half an acre. The original landlord was Haribhau Lamte and Ashok Haribhau Lamte - respondent No.1 his son. He applied under Section 88C of the Bombay Tenancy and Agricultural Lands

Act, 1948 (hereinafter referred to as the "Tenancy Act") to the Tahsildar. That provision is about exemption from certain provisions to lands leased by persons with the annual income not exceeding Rs.1,500/-. His contention was that the aforesaid holding does not yield income more than Rs.1,500/- per annum, and, therefore, he was entitled for exemption. It appears from the record and the order of the Tahsildar that simultaneously he has also started proceedings under Section 31 of the Tenancy Act.

3. The contention of the petitioners - tenants in reply to the said application was that the landlord did not apply within six months of attaining majority and therefore his application was time barred. That contention was rejected by the Tahsildar and application under Section 88C was allowed. The tenant challenged this order of the Tahsildar dated 7.7.1988 by filing an appeal before the Assistant Collector, Haveli, Sub Division Pune, where he raised similar contention of limitation. The Assistant Collector Haveli, Sub Division Pune, by an order dated 26.6.1990 dismissed his appeal, and hence this petition.

4. Counsel for the petitioners therefore contended that under Rule 53 of the Rules framed under the Tenancy Act, an application for certificate under Sub Section 2 of Section 88 was required to be made on or before 30.9.1961. He therefore contended that if and when original landlord Haribhau Lamte was alive in 1961, he should have filed an application and if he did not file that application, his legal heirs cannot file such an application and on that ground the application of the respondent should have been rejected and dismissed.

5. It is clear from both the orders of the courts below and the reply filed by the tenant to the original application under Section 88C that such a plea was not at all raised by the tenant. It is raised for the first time before this court, hence the tenant cannot be permitted to raise that point.

6. The second contention of the Counsel for the petitioner was that the respondent No.1 became major on 31.1.1982 after completion of 18 years and therefore under Rule 53, as stated above, he was

bound to apply within six months.

> **"53. Form of application under sub-section (2), section 88C and the period for making it and the form of certificate -- (1) An application for a certificate under sub-section (2) of section 88C shall be made in Form XXIV [on or before the 30th day of September, 1961]**
>
> **[Provided that where a landlord is -**
>
> **(a) a minor, or**
>
> **(b) a widow, or**
>
> **(c) a person subject to mental or physical disability, or**
>
> **(d) a serving member of the armed forces,**
>
> **[then, if he has not made application as required by sub-rule (1), such application may be made]-**
>
> **(A) by the landlord within six months from the date of which --**
>
> **(i) in the case of category (a) he attains majority;**
>
> **(ii) in the case of category (c) he ceases to be subject to such mental or physical disablity;**
>
> **(iii) in the case of category (d) he ceases to serve in the armed forces; and**
>
> **(B) in the case of a widow by the successor-in-title within six months from the date on which the widow's interest in the land ceases to exist.]**
>
> **(2) A certificate under sub-section (4) of section 88C shall be in Form XXV]."**

Since the landlord applied after attaining 21 years,

his application was time barred. My attention was also drawn by the counsel for the petitioner to the provisions of Section 3 of the Indian Majority Act :

> **"3. Age of majority of persons domiciled in India.-** *Subject as aforesaid, [every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court of Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age] shall, notwithstanding anything contained in the Indian Succession Act or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before.*
>
> *Subject as aforesaid, every other person domiciled in [India] shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before."*

Counsel for the petitioner contended that the respondent No.1 did not come in the first category mentioned by Section 3 of the Indian Majority Act, but he came under second category and age of 18 years should have been taken as a age of attaining majority and both the courts below having not considered this aspect, their orders were liable to be set aside.

7. Counsel for the petitioner repeatedly urged that provisions of Section 3 of the Indian Majority Act, are required to be considered. I have already held that this point was not raised before both the Courts below by the tenant and it is raised for the first time. It relates to facts and when on facts both the concurrent findings are against the petitioner, there is no merit in this petition.

8. Perusal of the order of the Tahsildar shows that in paragraph (iv) the Tahsildar has considered this aspect. He has stated that it was the contention of the present petitioner who was opponent before the Tahsildar that the application is time barred. But according to the Tahsildar the opponent did not produce any evidence in that regard. Further, the Tahsildar has observed:

> **".... As against this, the application of the applicant under Section 31 of the Act is still pending and therefore, the applicant has filed this application. The contention of the opponent is not correct."**

9. Similarly, the Assistant Collector after giving all the findings in favour of the landlord about income from their disputed land etc. has

rejected this contention of the limitation by observing as under:

> **"..There is no reason to doubt the evidence of the lower court that the Respondent No.1 has issued a notice to the appellant immediately on attaining the majority. Thus all procedural formalities have been duly carried out by the respondent for obtaining certificate u/s. 88-C of the B.T & A.L. Act, 1948..."**

10. A copy of the application under Section 88-C filed by the respondent Nos. 1 and 2 is at Exhibit 'A' of the petition. It is filed in 1985. It is stated that 14-15 years before the said application, the original landlord Haribhau died, therefore Haribhau died perhaps in 1970-71. Then the applicant has stated that on 31.1.1985 he completed 21 years which means that on 31.1.1982 he had completed 18 years of age. If Haribhau died the applicant was a minor from 1970-71 to 1982 and the applicant Gangubai was his mother. In fact, this ground of limitation is not at all required to be considered because original application to the Tahsildar under Section 88C was not only filed by the respondent no.1 Ashok but he has joined his mother Gangubai widow of Haribhau as applicant No.2. Even for the sake of argument if the contention of

the counsel for the petitioner is accepted that in 1985 the application of the respondent No.1 Ashok was time barred still the application was not liable to be rejected on that ground because his mother-widow of Haribhau was a co-applicant. In view of these facts no interference in the order of the courts below is called for. There is no merit in this petition, the same is dismissed. Rule is discharged.

(D.G. DESHPANDE, J.)